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Part 2

COMPREHENSIVE DRUG PENALTY ACT OF 1984

AUGUST 9, 1984.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 4901 which on February 22, 1984, was referred jointly to the Committee on the Judiciary, the Committee on Energy and Commerce and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 4901) to amend the Controlled Substances Act, the Controlled Substances Import and Export Act, and the Tariff Act of 1930 to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSES AND SUMMARY

H.R. 4901, as amended and ordered reported by the Committee on Ways and Means, consists of two titles. Title I, which is entitled the "Comprehensive Drug Penalty Act of 1984," is under the jurisdiction of the Committee on the Judiciary and was favorably reported by that Committee on June 19, 1984. It makes various amendments to the Controlled Substances Act and the Controlled Substances Import and Export Act, including increasing the penalties for convictions in all felony drug trafficking cases and creating a strong criminal forfeiture statute.

Title II, which is under the jurisdiction of the Committee on Ways and Means, amends the Tariff Act of 1930 to provide for a more streamlined approach for handling civil forfeitures and to expand the arrest authority of customs officers. The bill would

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allow the use of administrative rather than judicial forfeiture proceedings in many more cases by increasing the current ceiling from $10,000 to $100,000 for most articles and by removing the ceiling entirely for prohibited merchandise and conveyances which are used to import, export, transport, or store any controlled substance. The bill also would raise the amount of the bond which is required to be posted in order to require a judicial forfeiture from $250 to the lessor of $2,500 or 10 percent of the value of the property. Additionally, the bill would establish the Customs Forfeiture Fund to help defray the escalating costs associated with forfeiture procedures and provide the authority for Customs to transfer seized or forfeited property to State or local law enforcement agencies. Finally, the bill would increase the compensation level which can be paid to informers from $50,000 to $250,000.

Under current law, judicial forfeiture proceedings must be used in all cases where the seized property exceeds $10,000, even though most cases are uncontested. This results in significant delays of up to two years, during which time the seized property frequently deteriorates, resulting in a substantial decrease in value. Further, since Customs may not currently use the net proceeds of one seizure to offset the unrecouped costs of another seizure, such losses must be covererd by their regular appropriations. Because it is difficult to budget for these unpredictable expenditures, monies have to be diverted from other important administrative or enforcement functions.

The changes provided for in Title II should result in substantial cost savings to the U.S. Government, without adversely affecting the property rights of owners wishing to contest the forfeiture of their property.

In order to facilitate floor action, the Committee adopted a substitute amendment incorporating the language of the bill as reported by the Committee on the Judiciary with several minor technical corrections.

The Committee also adopted an amendment to section 207 to increase from $500 to $1,000 the value of an article which Customs may destroy or otherwise dispose of if the expense of keeping the article is disproportionate to the value thereof and an amendment to section 208 deleting paragraph (d) in order to remove a duplication with respect to how the Customers Forfeiture Fund would be funded. The Committee adopted several amendments to section 209 of the bill to clarify that the Customs Forfeiture Fund is only available for the payment of specified expenditures "with respect to *seizures and forfeitures* by the United States Customs Service under any law enforced or administered by it" and for the purchase of evidence relating to the smuggling of controlled substances and to violations of currency and foreign transaction reporting requirements if there is a substantial probability that a violation of those requirements is related to the smuggling of controlled substances. Finally, the Committee amended section 209 to restrict the amount authorized to be appropriated from the fund to $10 million per fiscal year.

During the 97th Congress, a similar version of this bill passed the House and Senate as part of an omnibus crime package. The

President, however, primarily on an issue unrelated to these provisions, decided to veto the bill.

COMMITTEE ACTION

The Subcommittee on Trade received testimony from the U.S. Customs Service on a predecessor bill, H.R. 3299, during its hearing on miscellaneous tariff bills on November 15, 1983.

On May 10, the Subcommittee on Trade by voice vote ordered H.R. 4901 reported favorably to the full Committee with amendments.

On August 1, the Committee on Ways and Means ordered H.R. 4901 favorably reported by voice vote with amendments.

SECTION-BY-SECTION ANALYSIS OF TITLE II, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

Section 201

Section 201 amends sections 602, 605, 606, and 607 of the Tariff Act of 1930 (the Tariff Act) to expressly include "aircraft" in the coverage of those sections. Presently, aircraft are covered by these sections implicitly pursuant to 49 U.S.C. 1509 and part 6 of title 19 of the Code of Federal Regulations.

Section 202

Section 202 amends section 607 of the Tariff Act by raising the value of property which can be administratively forfeited to $100,000 except in the case of prohibited merchandise and conveyances used to import, export, or otherwise transport controlled substances, for which there would be no limit. Increased enforcement activities have led to a dramatic rise in the number of conveyances seized by Customs during the last few years, many of which were used to smuggle large quantities of controlled substances.

Under present law, all property over $10,000 must be judicially forfeited, even if the forfeiture is uncontested as is frequently the case. This has resulted in crowded Federal court dockets and delays in forfeiture proceedings of 12 to 18 months are not uncommon. During this period, the Government must pay for the conveyances' storage and maintenace and the conveyances generally deteriorate tremendously in value. Keeping a large number of seizures also strains Customs resources making it difficult to properly maintain the property under seizure and to prevent vandalism. Increasing the administrative forfeiture limit will reduce costs by speeding up forfeitures. The bill retains the provision of law permitting interested parties desiring to contest forfeitures to obtain court review if they are willing to post a claim and cost bond.

This statutory change has been recommended by the General Accounting Office in its report, "Better Care and Disposal of Seized Cars, Boats and Planes Should Save Money and Benefit Law Enforcement" (GAO–PLRD–83–94, July 15, 1983, at page vi).

Section 203

Section 203 amends section 608 of the Tariff Act to specifically include "aircraft" and to increase the amount of bond which is to

be filed by a party wishing to contest the forfeiture of property subject to the provisions of section 607 (i.e., property valued at $100,000 or less, prohibited merchandise or conveyances of illicit drugs) in a judicial proceeding. The current bond requirement of $250 has not changed since 1844, when administrative forfeiture was limited to property valued at $100 or less. This amount is clearly to low to discourage the filing of frivolous suits and does not reflect the substantial costs to the Customs Service in pursuring a judicial forfeiture. As amended by section 203, the bond would be set at the lessor of $2,500 or 10 percent of the value of the property, but not less than $250. Current Customs procedures, which excuse individuals from the application of the bond requirements if financial need is established, would be maintained.

Section 204

Section 204 amends section 609 of the Tariff Act to make explicit reference to "aircraft" and to provide for the deposit of the proceeds of the sale of property forfeited under the customs law into the Customs Forfeiture Fund established in section 209.

Section 205

Section 205 amends section 610 of the Tariff Act to conform to the amendments discussed above regarding section 607. Consistent with current law, section 610 requires a judicial forfeiture for all property not governed by section 607. Thus, as amended by section 202, property valued in excess of $100,000 which is neither a prohibited import nor a conveyance used to transport controlled substances would be subject to judicial forfeiture regardless of whether the forfeiture is contested.

Section 206

Section 206 amends section 611 of the Tariff Act to make explicit reference to "aircraft."

Section 207

Section 207 amends section 612 of the Tariff Act (which permits, in certain circumstances, the summary sale of a wasting asset) to conform with the amendment to section 607 discussed above in relation to section 202 of the bill. It further amends section 612 to make explicit reference to "aircraft" and to add a new subsection (b) which would allow Customs to destroy or otherwise dispose of property valued at less than $1,000 if the expense of keeping such property is disproportionate to the value thereof. This provision, which was added by the Committee on the Judiciary and expanded by the Committee on Ways and Means by increasing the value from $500 to $1,000, should result in substantial savings in Customs' storage and related costs for junk-type articles which are difficult to sell. The Customs Forfeiture Fund would be subject to claims of parties with an interest in this property.

Section 208

Section 208 makes conforming amendments to section 613 of the Tariff Act, including making explicit reference to "aircraft."

Section 209

Section 209 amends the Tariff Act by creating a new section 613A establishing a Customs Forfeiture Fund in the U.S. Treasury during the period from date of enactment until September 30, 1987. During this period, net proceeds from Customs' forfeitures (after the payment of expenses directly related to such forfeitures) will be deposited in the fund and be available to the Customs Service, through the appropriations process, to pay designated expenses *"with respect to seizures and forfeitures* by Customs under any law enforced or administered by it" and for Customs' purchases of evidence of violations *"smuggling of controlled substances and of violations of the currency and foreign transaction reporting requirements of chapter 53, title 31, U.S. Code if there is a substantial probability that the violation of these requirements are related to the smuggling of controlled substances."* [Emphasis added.] The underscored language was added by the Committee on Ways and Means to restrict Customs expenditures out of the fund to those enumerated expenditures clearly associated with seizure, forfeiture, or drug enforcement.

Several Members of the Committee expressed concern that without such restrictions, the Customs Service could easily circumvent the established budget process and authorization procedures thereby providing funds for other purposes. In addition to the purchase of evidence described above, the fund would be available for the payment of the following expenditures relating to seizures and forfeitures:

(1) all proper expenses of the seizure or the proceedings of forfeiture and sale (not otherwise recovered under section 613(a)), including, but not limited to, expenses of inventory, security, maintaining the custody of the property, advertising and sale, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(2) payment of awards of compensation to informers under section 619 of the Tariff Act;

(3) payment for satisfaction of—

(a) liens for freight, charges and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(b) other liens against forfeited property;

(4) payments of amounts authorized by law with respect to remission and mitigation;

(5) payment for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the U.S. Customs Service; and

(6) payments for property disposed of under the new section 612(b) of this bill.

The language in item (1) above reflects a Committee amendment to the bill as introduced to more precisely describe the applicable expenses of seizure adn forfeiture and to more closely conform to the language currently set forth in section 613(a)(1) of the Tariff Act. Further, under an amendment adopted by the Committee, the total amount authorized to be appropriated from the fund for the expenditures described above would be $10 million in each fiscal year.

At the end of each of the first three fiscal years, any amount in the fund in excess of $10 million would be deposited in the general Treasury fund and on September 30, 1987, the fund would terminate and all proceeds would be deposited in the general fund. This fund has been established for a temporary period in order to give the Congress the opportunity to review its operation and effectiveness. It is expected that, based upon the findings of this review process, the Congress will make a decision whether to reauthorize the fund after September 30, 1987, allow it to terminate, or find another method for funding seizure and forfeiture expenditures.

Provision is also made for the reimbursement from the fund for expenses incurred by the Coast Guard in connection with a seizure and for the investment of proceeds from the fund which are not currently needed. Finally, within four months after the end of each fiscal year, Customs is required to submit to the Congress a report on receipts and disbursements with respect to the fund for such year. Because the Committee has oversight responsibility over the Customs Service, including its budget authorization, it has a strong interest in seeing that the Customs Forfeiture Fund is operated in a manner consistent with its established purpose. Therefore, the Commission would expect the Customs Service to submit copies of the report directly to the Committee for study.

The Committee believes that the establishment of the Customs Forfeiture Fund, which was recommended by the GAO study referred to earlier, should result in substantial budget savings and provide greater efficiency in the handling of seized and forfeited property. Currently, the Customs Service must cover losses associated with forfeitures under their regular appropriations. Since it is very difficult to budget for these unpredictable expenditures, monies may have to be diverted from other important administrative or enforcement functions.

Under present law, the costs in handling each seizure are deducted from the proceeds of that seizure, if any. The resulting "net proceeds" are then transferred to the General Fund in the Treasury. But if the proceeds do not exceed the expenses, the agency must cover the expenses out of its regular budget. In other words, the net proceeds from the sale of one seizure cannot presently be used to offset the unrecouped costs of another seizure. The new fund would allow the agency to balance all proceeds against all expenses, with proceeds in excess of costs, if any, on each forfeiture going into the fund and losses, if any, on individual forfeitures being covered in the fund. Net proceeds in excess of $10 million would be transferred to the general fund of the Treasury at the end of each fiscal year and the total proceeds being so transferred when the fund expires on September 30, 1987.

The establishment of the special account would also encourage more efficient maintenance, storage, and inventory procedures than are feasible under current requirements, including such measures as possible national inventory and property maintenance control through computerization.

The establishment of the fund would also give greater protection to innocent lienholders and would allow the agency to pay the costs of maintenance of the properties on a regular basis without regard

to the sale or transfer date of the specific property and without the need of contracting for services on a contingency basis. The net effect would be to relieve the agency of the financial restrictions and complications of having to deal with each and every seizure on a separate basis, but would maintain the accountability on an overall basis.

Section 210

Section 210 amends sections 614 and 615 of the Tariff Act to make explicit reference to "aircraft."

Section 211

Section 211 inserts a new section 616 in the Tariff Act permitting the Secretary of the Treasury to turn over property seized by Customs to State and local law enforcement agencies to permit those agencies in States with forfeiture laws to institute State forfeiture proceedings when appropriate or transfer property already forfeited to any State and local law enforcement agencies which participated directly in the seizure of the property. Such a transfer occurs under such terms as the Secretary may determine, thus allowing for the pass on of forfeiture costs to the States, if appropriate. In this situation, the Federal Government would cease to be liable once the property was turned over the the State agency.

Section 212

Section 212 amends section 619 of the Tariff Act to raise the maximum level of compensation which can be paid to informers from $50,000 to $250,000. However, the current requirement that limits the payment to 25 percent of the net proceeds recovered would be retained. Many informants take great risks in reporting violations for Federal law and the current limit of $50,000 has not been changed since 1922.

Section 213

Section 213 amends section 618 of the Tariff Act to make explicit reference to "aircraft."

Section 214

Section 214 adds a new section 589 to the Tariff Act to grant additional arrest authority to Customs officers. Under existing law, a Customs officer has authority to make warrantless arrests for violations of the narcotic drug and marijuana laws under seciton 7607 of the Internal Revenue Code, for violations of the navigation laws if committed in the officer's presence, and for violations of revenue laws under 19 U.S.C. 1581. In addition, miscellaneous conservation, fisheries, and pollution laws also confer arrest authority on Customs officers in various situations (16 U.S.C. 3405, 16 U.S.C. 772d, 916g, 959(b), and 33 U.S.C. 413).

Currently, the court decisions require Customs officers making arrests for export violations, assaults on Customs officers, and other Federal felony violations to rely on the various State laws conferring arrest authority on private persons ("citizen's arrest"), unless State law confers peace officer status on them. This reliance

on 50 different State laws is both confusing and inconsistent with the authority conferred upon other Federal officers.

Customs officers are now engaged in Federal enforcement programs where such limited authority has proven to be clearly inadequate and potentially compromises and hinders the Customs Service's present role in the efficient enforcement of such Federal programs.

The new section 589 would incorporate present authority contained in section 7607 of the Internal Revenue Code of 1954 for Customs officers to carry firearms, execute and serve search and arrest warrants, and serve subpoenas and would, in addition, authorize an officer of the Customs Service to make arrests without a warrant for any offense against the United States committed in the officer's presence, or outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed, or is committing, a felony.

It is not the Committee's intention that the term "reasonable grounds to believe" as used in this section would create a new standard for warrantless arrests. Rather, it should be interpreted in a manner which is consistent with the term's established meaning in case law with respect to arrest authority of other Federal law enforcement officials.

Enactment of section 214 would also make it clear that Customs officers may serve search and arrest warrants for any Federal offense including drug offenses. This would eliminate the problem raised in *U.S.* v. *Harrington,* 520 F. Supp. 93 (1981), which, although reversed on appeal, questioned Customs authority to serve search warrants in joint DEA-Customs investigations away from the border.

This section would also authorize Customs officiers to perform any other law enforcement duties that the Secretary of the Treasury designates. This provision would codify present practice under 31 U.S.C. 321 and permit maximum utilization of Customs personnel in other Treasury activities, such as protective details and inspector general investigations.

By approving the provisions establishing law enforcement authority for the U.S. Customs Service, the Committee does not intend to expand or diminish Customs service jurisdiction over criminal offenses. Neither should these provisions be construed as an attempt to alter the terms of Reorganization Plan No. 2 of 1973, Executive Order 11727, "Establishing a Drug Enforcement Administration in the Department of Justice," which order defines the functions, jurisdiction, and authority of the Drug Enforcement Administration as the principal Federal narcotics enforcement agency. Rather, this section of the bill is an effort to clarify and codify existing Customs Service authority and is supported by the Department of Justice as well as the Department of the Treasury.

Vote of Committee in Reporting the Bill

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 4901 was by

voice vote ordered favorably reported by the Committee with amendments.

OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee makes the following findings:

The Committee, based on the oversight activity of the Subcommittee on Trade, has concluded that changes in the organization of the U.S. Customs Service or in the laws administered by it, other than those included in the legislation, are not necessary at this time.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 4901 does not provide new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rule XIII and with clauses 2(l)(3) (B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 4901 and required to be included herein.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 7, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4901, the Comprehensive Drug Penalty Act of 1984, as ordered reported by the House Committee on Ways and Means, August 1, 1984. We estimate that the federal government will realize a small savings, and the state and local governments will incur no additional costs as a result of the enactment of this bill.

H.R. 4901 changes certain forfeiture provisions and increases penalties for controlled substances offenses. The bill provides that any building, land, aircraft, vehicle, or other property used for the cultivation, storage, export, or import of drugs may be subject to forfeit. The bill provides for a Department of Justice Forfeiture Fund (DJFF) and a Customs Forfeiture Fund (CFF), to be set up as two separate accounts within the Treasury. Any proceeds remaining from the sale of forfeited property after the payment of expenses will be deposited into the funds. Expenditures from these funds shall be subject to appropriation action. The two funds are established from the enactment date through the end of fiscal year 1987.

The bill authorizes the appropriation of a maximum of $10 million from each fund each year for the payment of rewards for information, the purchase of evidence, and the redesign of forfeited vehicles for law enforcement functions. The bill also authorizes appropriations of such sums as are necessary from the funds for certain other purposes related to forfeitures. At the end of the fiscal years 1984, 1985, and 1986, any amount in the fund in excess of $10 million will be deposited in the general fund of the Treasury. Under current law, the proceeds from the sale of forfeited property can only be used to pay any expenses associated with that property. The funds will allow the proceeds remaining from the sale of forfeited property to be used to pay any expenses for the sale of other forfeited property.

The bill also provides for substantial increases in the penalties that may be imposed for controlled substances offenses, in the value of merchandise that may be seized by customs officers without judicial forfeiture proceedings, in the amount of the bond posted to contest a forfeiture, and in the amount that may be paid as a reward for information or for the purchase of evidence.

While H.R. 4901 specifically authorizes appropriations totaling $20 million annually from the two new funds, the bill is likely to result in no significant additional costs to the government and may produce some savings. The bill would affect the number of forfeitures, the receipts from the sale of forfeited property, and the expenses associated with each forfeiture.

The number of forfeitures and resulting receipts should increase for two main reasons. First, the bill allows more property to be forfeited administratively rather than judicially. Administrative forfeitures take about 2–3 months, while judicial forfeitures may take as long as 24 months. Second, the increase in the maximum amount that may be paid for information is expected to elicit more information and make possible more forfeitures. Sales receipts may therefore be higher, because more forfeitures will be accomplished and because the administrative forfeiture procedures would allow the seized property less time to depreciate, resulting in higher sale value.

The expenses associated with forfeitures may be lower than under current law because of the increase in administrative forfeitures. The shorter time necessary for these forfeitures will result in lower costs for storage, security, and maintenance of seized property.

While the higher payments for information may offset some of these savings, the savings are expected to exceed the increases in payments. There is, however, no clear basis for accurately estimating the magnitude of these increases and decreases.

We also expect that the federal goverment would receive increased revenues from the higher penalties authorized by the bill. In most instances, maximum fines have been increased tenfold. There is no clear basis for projecting the number or amounts of such fines.

The bill provides that the Secretary of the Treasury may discontinue forfeiture proceedings or turn over seized property to state and local law enforcement agencies to allow those agencies to implement state forfeiture proceedings. These transfers will be at the

discretion of the Secretary, and no net cost to state and local governments is expected to occur.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 4901 as amended would not have any inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

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PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 405, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than [$25,000, or both.] *$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.* If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than [$50,000, or both.] *$500,000, or both if such person is an individual, or to a fine of not more than $2,000,000 if such person is other than an individual.* Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addi-

tion to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4), (5), and (6) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than [$15,000, or both.] *$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.* If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than [$30,000, or both.] *$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.* Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than [$10,000, or both.] *$100,000, or both if such person is an individual, or to a fine of not more than $250,000 if such person is other than an individual.* If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than [$20,000, or both.] *$250,000, or both if such person is an individual, or to a fine of not more than $500,000 if such person is other than an individual.* Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 1 year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than 1 year, a fine of not more than [$5,000, or both.] *$10,000, or both if such person is an individual, or to a fine of not more than $25,000 if such person is other than an individual.* If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be

sentenced to a term of imprisonment of not more than 2 years, a fine of not more than [$10,000, or both.] *$25,000, or both if such person is an individual, or to a fine of not more than $50,000 if such person is other than an individual.*

* * * * * * *

(5) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, except as authorized by this title, phencyclidine (as defined in section 310(c)(2)) shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than [$25,000, or both.] *$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.* If any person commits such a violation after one or more prior convictions of him for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than [$50,000, or both.] *$500,000, or both if such person is an individual, or to a fine of not more than $2,000,000 if such person is other than an individual.* Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(6) In the case of a violation of subsection (a) involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, [and in addition, may be fined not more than $125,000.] *a fine of not more than $250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.* If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title, title III, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, [and in addition, may be fined not more than $250,000.] *a fine of not more than $500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.*

* * * * * * *

(d) Any person who knowingly or intentionally—

(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this title, or

(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this title,

shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than [$15,000, or both.] *$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.*

PROHIBITED ACTS B—PENALTIES

SEC. 402. (a) It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 309;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 305 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 305 of this title;

(5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this title or title III;

(6) to refuse any entry into any premises or inspection authorized by this title or title III;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 304(f) or 511 or to remove or dispose of substances so placed under seal;

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this title or title III, any information acquired in the course of an inspection authorized by this title concerning any method or process which as a trade secret is entitled to protection; or

(9) to distribute or sell piperidine in violation of regulations established under section 310(a)(2), respecting presentation of identification.

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 306; or

(2) in excess of a quota assigned to him pursuant to section 306.

(c)(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed

knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentence to imprisonment of not more than one year or a fine of not more than [$25,000, or both.] *$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.*

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of [$50,000, or both.] *$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.*

* * * * * * *

PROHIBITED ACTS C—PENALTIES

SEC. 403. (a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 308 of this title;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this title or title III, or (B) to present false or fraudulent identification where the person is receiving or purchasing piperidine and the person is required to present identification under section 310(a); or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance.

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in commiting or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pic-

tures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than [$30,000, or both] *$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual*; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than [$60,000, or both.] *$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual.*

* * * * * * *

CONTINUING CRIMINAL ENTERPRISE

SEC. 408. (a)[(1)] Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than [$100,000,] *$500,000 if such person is an individual, or a fine of not more than $1,000,000 if such person is other than an individual,* and to the forfeiture prescribed in [paragraph (2)] *section 415*; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than [$200,000,] *$1,000,000 if such person is an individual, or a fine of not more than $2,000,000 if such person is other than an individual,* and to the forfeiture prescribed in [paragraph (2).] *section 415.*

[(2) Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the United States—

[(A) the profits obtained by him in such enterprise, and

[(B) any of his interest in, claim against, or property or constructual rights of any kind affording a source of influence over, such enterprise.]

* * * * * * *

[(d) The district courts of the United States (including courts in the territories or possessions of the United States having jurisdiction under subsection (a)) shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as they shall deem proper.]

* * * * * * *

ALTERNATIVE FINE

SEC. 413. In lieu of a fine otherwise authorized by this part, a defendcnt who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

GENERAL PROVISIONS RELATING TO FINES

SEC. 414. (a) In determining whether to impose a fine under this part, and the amount, time, and method of payment of a fine, the court shall—

(1) give primary consideration to the need to deprive the defendant of profits or other proceeds from the offense;

(2) consider the defendant's income, earning capacity, and financial resources;

(3) consider the burden that the fine will impose on the defendant and on any person who is legally or financially dependent on the defendant; and

(4) consider any other pertinent equitable factor.

(b) As a condition of a fine, the court may require that payment be made in installments or within any period that is not longer than the maximum applicable term of probation or imprisonment, whichever is longer. If not otherwise required by such a condition, payment of a fine shall be due immediately.

(c) If a fine is imposed on an organization, it is the duty of each individual authorized to make disbursements for the organization to pay the fine from assets of the organization.

(d)(1) A defendant who has paid part of a fine, may petition the court for extension of the time for payment, modification of the method of payment, or remission of all or part of the unpaid portion.

(2) The court may enter an appropriate order under this subsection, if it finds that—

(A) the circumstances that warranted the fine in the amount imposed, or payment by the time or method specified, no longer exist; or

(B) it is otherwise unjust to require payment of the fine in the amount imposed or by the time or method specified.

CRIMINAL FORFEITURE

SEC. 415. (a) If an indictment or information alleges that property is subject to forfeiture under this section, the United States may request an order for seizure of such property in the same manner as provided for a search warrant. The court shall order seizure if there is probable cause to believe that—

(1) the property is subject to forfeiture; and

(2) an order restraining transfer of the property is not sufficient to ensure availability of the property for forfeiture.

(b) Any person who is convicted of a felony under this title or title III shall forfeit to the United States such person's interest in—

(1) any property constituting or derived from gross profits or other proceeds obtained from the offense;

(2) any property used, or intended to be used, to commit the offense; and

(3) in the case of a conviction under section 408 of this title, in addition to the property described in paragraphs (1) and (2), such person's interest in, claim against, or property or contractual right of any kind affording a source of control over, the continuing criminal enterprise.

(c) The court shall order forfeiture of property referred to in subsection (b) if the trier of fact determines beyond a reasonable doubt that such property is subject to forfeiture.

(d) The United States shall, to the maximum extent practicable, provide notice of the provisions of subsections (e), (f), and (g) to any person with an alleged interest in property forfeited under subsection (c) and shall, in the manner prescribed by the Attorney General, provide public notice of the forfeiture.

(e)(1) Not later than 60 days after the date of an order under subsection (c) any person with an alleged interest in the property may petition the Attorney General for remission or mitigation of the forfeiture.

(2) Not later than 90 days after the filing of a petition under paragraph (1), the Attorney General shall make a written determination with respect to the petition. Except as provided in subsection (f), the property shall be disposed of pursuant to such determination, which shall not be subject to review.

(3) A period specified in this subsection may be extended by the court for good cause shown.

(f)(1) Any person (other than a defendant convicted of the offense on which the forfeiture is based) may petition the court for remission or mitigation of the forfeiture. A petition under this subsection shall be filed not later than 60 days after the date of the order under subsection (c), or, if a petition is filed under subsection (e), not later than 60 days after the date of the determination of the Attorney General.

(2) The court shall grant appropriate relief if, after a hearing, the petitioner establishes by a preponderance of the evidence that—

(A) at the time of the offense the petitioner had an interest in the property that was separate from or superior to the interest of the defendant; or

(B) in the case of an interest acquired for value after the offense, when acquiring the interest the petitioner did not know or have reason to know of the offense or of any order restraining transfer of the property.

(g) A petition to the Attorney General or the court under this section shall be verified and shall set forth the relief sought, the nature and extent of the petitioner's interest in the property, the time and circumstances of the petitioner's acquisition of interest, and any additional facts and circumstances supporting remission or mitigation.

(h)(1) Except as provided in paragraph (2), the customs laws relating to disposition of seized or forfeited property shall apply to property under this section, to the extent that such laws are not inconsistent with this section.

(2) The duties of the Secretary of the Treasury with respect to dispositions of property under the customs laws shall be performed under paragraph (1) by the Attorney General, except to the extent

that such duties arise from forfeitures effected under the customs laws.

(i) In any disposition of property under this section, a convicted person shall not be permitted to acquire property forfeited by such person.

(j) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(k)(1) In addition to any order authorized by subsection (j), the court may, before the filing of an indictment or information, enter an order restraining the transfer of property that is or may be subject to forfeiture.

(2) An order shall be entered under this subsection if the court determines that—

(A) there is a substantial probability that the United States will prevail on the issue of forfeiture;

(B) there is a substantial probability that failure to enter the order will result in unavailability of the property for forfeiture; and

(C) the need to assure availability of the property outweighs the hardship on any person against whom the order is to be entered.

(3)(A) Except as provided in subparagraph (B), an order under this subsection shall be entered only after notice to persons appearing to have an interest in the property and opportunity for a hearing.

(B) A temporary order under this subsection may be entered upon application of the United States, without notice or opportunity for a hearing, if an information or indictment has not been filed and the United States demonstrates that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, except that the court may extend the effective period of the order for not more than 10 days for good cause shown and for a longer period with the consent of each person affected by the order.

(l) There may be a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

(1) such property was acquired by such person during the offense or within a reasonable time after the offense; and

(2) there was no likely source for such property other than the offense.

PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

PROCEDURES

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FORFEITURES

SEC. 511. (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this title.

* * * * * * *

(7) If the offense involved is a felony, all land and buildings used, or intended for use, for holding or storage of property described in paragraph (1) or (2) or for cultivation of any plant that is such property, except that no land or building shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

The court may order forfeiture of less than the whole of any land or building under paragraph (7) if the owner establishes that forfeiture of the whole would be grossly disproportionate to the severity of the offense or to the extent of the use or intended use. If land under paragraph (7) is used or intended to be used for cultivation, the court shall order forfeiture of only the portion of the tract so used or intended to be used, and if the cultivation is dispersed over less than all of the tract, the court may order forfeiture of a portion of the tract equal to the areas used or intended to be used for cultivation.

* * * * * * *

(d) *(1)* The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(2) In addition to the venue under section 1395 of title 28, United States Code, or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture under this section, a proceeding for forfeiture may be brought in the judicial district in which the defendant is found or in which the prosecution is brought.

(e) Whenever property is forfeited under this title the Attorney General may—

(1) retain the property for official use;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this title shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. [The] *Except as provided in subsection (h) of this section, the* Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses.

* * * * * * *

(h) During the period beginning on the date of the enactment of this subsection, and ending on September 30, 1987, the Attorney General shall forward to the Treasurer of the United States for deposit in the Department of Justice Forfeiture Fund any amounts of moneys and proceeds remaining after payment of expenses of proceedings for forfeiture under subsection (e) of this section.

(i) The filing of an indictment or information alleging a violation of this title or title III that is related to a civil forfeiture proceeding under this section shall, upon motion of the United States or a claimant in that proceeding, and for good cause shown, stay the civil forfeiture proceeding.

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CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

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PART A—IMPORTATION AND EXPORTATION

DEFINITIONS

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PROHIBITED ACTS A—PENALTIES

SEC. 1010. (a) Any person who—

(1) contrary to section 1002, 1003, or 1007, knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 1005, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 1009, manufactures or distributes a controlled substance,

shall be punished as provided in subsection (b).

(b)(1) In the case of a violation under subsection (a) with respect to a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than [$25,000, or both.] *$500,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual.* If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment.

(2) In the case of a violation under subsection (a) with respect to a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than five years, or be fined not more than [$15,000, or both.] *$500,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual.* If a sentence under this paragraph provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

(3) In the case of a violation under subsection (a) involving more than 1,000 pounds of marihuana, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than $250,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual.

PROHIBITED ACTS B—PENALTIES

SEC. 1011. Any person who violates section 1004 shall be subject to the following penalties:

(1) Except as provided in paragraph (2), any such person shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. Sections 402(c)(1) and (c)(3) shall apply to any civil penalty assessed under this paragraph.

(2) If such a violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally and the trier of fact specifically finds that the violation was so committed, such person shall be sentenced to imprisonment for not more than one year or a fine of not more than [$25,000] *$50,000* or both.

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APPLICABILITY OF SECTION 413 AND SECTION 414

SEC. 1017. Sections 413 and 414 shall apply with respect to fines under this part to the same extent that such sections apply with respect to fines under part D of title II. For purposes of such application, any reference in such section 413 or 414 to "this part" shall be deemed to be a reference to part A of title III.

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COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

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TITLE 28, UNITED STATES CODE

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PART II—DEPARTMENT OF JUSTICE

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CHAPTER 31—THE ATTORNEY GENERAL

Sec. 501. Executive department.

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530A. Department of Justice Forfeiture Fund.

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§ 530A. Department of Justice Forfeiture Fund

(a) There is established in the Treasury a fund to be known as the Department of Justice Forfeiture Fund (hereinafter in this section referred to as the "fund"), which shall be available to the Attorney General, subject to appropriation, during the period beginning on the date of the enactment of this section and ending on September 30, 1987. The fund shall be available with respect to the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), section 1963(c) of title 18, United States Code, and section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) for payment (to the extent that such payment is not otherwise provided for by law—

(1) of expenses of forfeiture and sale, including expenses of seizure and detention;

(2) of rewards for information resulting in a conviction or forfeiture;

(3) of liens against forfeited property;

(4) of amounts with respect to remission and mitigation;

(5) for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, or the Immigration and Naturalization Service; and

(6) for purchase of evidence of any violation.

(b)(1) Any reward under subsection (a)(2) of this section shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay a reward of $10,000 or more may be delegated only to the Administrator of the Drug Enforcement Administration, the Director of the Federal Bureau of Investigation, or the Commissioner of Immigration and Naturalization. Any such reward shall not exceed $250,000, except that a reward for information resulting in a forfeiture, shall not exceed the lesser of $250,000 or one-quarter of the amount realized by the United States from the property forfeited.

(2) Any amount under subsection (a)(6) of this section shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay $100,000 or more may be delegated only to the Administrator of the Drug Enforcement Administration, the Director of the Federal Bureau of Investigation, or the Commissioner of Immigration and Naturalization. No such payment shall exceed $250,000.

(3) Amounts under subsection (a) of this section shall be available, at the discreation of the Attorney General, to reimburse the applicable appropriation for expenses incurred by the Coast Guard for a purpose specified in such subsection.

(c) There shall be deposited in the fund during the period beginning on the date of the enactment of this section and ending on September 30, 1987—

(1) the proceeds (after payment of expenses of forfeiture and sale) from forfeiture under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), and section 274 of the Immigration and Nationality Act (8 U.S.C. 1324);

(2) the proceeds (after payment of expenses of forfeiture and sale) from forfeiture under section 1963(c) of title 18, United States Code, in any case in which the racketeering activity consists of a narcotic or other dangerous drug offense referred to in section 1961(1)(A) of such title; and

(3) earnings on amounts invested under subsection (d) of this section.

(d) Amounts in the fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year.

(f)(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, such sums as may be necessary under subsection (a) of this section, except that not more than $10,000,000 are authorized to be appropriated from the fund under paragraphs (2), (5), and (6) of such subsection for each such fiscal year.

(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of $10,000,000 shall be deposited in the general fund of the Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.

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TARIFF ACT OF 1930

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TITLE IV—ADMINISTRATIVE PROVISIONS

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PART V—ENFORCEMENT PROVISIONS

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SEC. 589. ENFORCEMENT AUTHORITY OF CUSTOMS OFFICERS.

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

(1) carry a firearm;

(2) execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

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SEC. 602. SEIZURE—REPORT TO CUSTOMS OFFICER.

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such collector any vessel, vehicle, *aircraft,* merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

SEC. 605. SAME—CUSTODY.

All vessels, vehicles, *aircraft,* merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collection district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.

SEC. 606. SAME—APPRAISEMENT.

The appropriate customs officer shall require the appraiser to determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the customs laws.

[SEC. 607. SAME—VALUE $10,000 OR LESS.

[If such value of such vessel, vehicle, merchandise, or baggage does not exceed $10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct,. For the purposes of this section and sections 610 and 612 of this Act, merchandise the importa-

tion of which is prohibited shall be held not to exceed $10,000 in value.]

SEC. 607. SEIZURE; VALUE $100,000 OR LESS, PROHIBITED MERCHANDISE, TRANSPORTING CONVEYANCES.

(a) If—

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $100,000;

(2) such seized merchandise is merchandise the importation of which is prohibited; or

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) As used in this section, the term "controlled substance" has the meaning given that term in section 102 of the Controlled Substance Act (21 U.S.C. 802).

SEC. 608. SAME—CLAIMS—JUDICIAL CONDEMNATION.

Any person claiming such vessel, vehicle, *aircraft,* merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing at such claim, and the giving of a bond to the United States in the penal sum of *$2,500 or 10 percent of the value of the claimed property, whichever is lower, but not less than* $250, with sureties to be approved by the such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, the such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

SEC. 609. SAME—SUMMARY FORFEITURE AND SALE.

(a) If no such claim is filed or bond given within the twenty days hereinbefore specified, the collector shall declare the vessel, vehicle, *aircraft,* merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and *(except as provided in subsection (b) of this section)* shall deposit the proceeds of sale, after deducting the actual expenses of seizure, publication and sale, in the Treasury of the United States.

(b) During the period beginning on the date of the enactment of this subsection and ending on September 30, 1987, the appropriate customs officer shall deposit the proceeds of sale (after deducting such expenses) in the Customs Forfeiture Fund.

SEC. 610. SAME—[VALUE MORE THAN $10,000] *JUDICIAL FORFEITURE PROCEEDINGS.*

[If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000,] *If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607 of this Act,* the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

SEC. 611. SAME—SALE UNLAWFUL.

If the sale of any vessel, vehicle, *aircraft,* merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, *aircraft,* merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, *aircraft,* merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, *aircraft,* merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided,* That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

SEC. 612. SAME—SUMMARY SALE.

(a) Whenever it appears to the appropriate customs officer that any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and [the value of] such vessel, vehicle, *aircraft,* merchandise, or baggage [as determined under section 606 of this Act, does not exceed $10,000,] *is subject to section 607 of this Act,* and such vessel, vehicle *aircraft,* merchandise, or baggage has not been delivered under bond, such officer shall, proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If [such value of] such vessel, vehicle, *aircraft,* merchandise, or baggage [exceeds $10,000] *is not subject to section 607 of this Act,* such officer, shall forthwith transmit the appraiser's return and his report of the seizure to the United States district attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, *aircraft,* merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the

final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, *aircraft,* merchandise, or baggage so sold would have been subject to such claim.

(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property under regulations prescribed by the Secretary of the Treasury.

SEC. 613. DISPOSITION OF PROCEEDS OF FORFEITED PROPERTY.

(a) Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, *aircraft,* merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this Act, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. [If no application] *Except as provided in subsection (c), if no application* for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury or the Secretary of Commerce, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited [with the Treasurer of the United States as a customs or navigation fine] *in the general fund of the Treasury of the United States.*

(b) If merchandise is forfeited under section 592 of this Act, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a) (1) and (2) of this section *or subsection (a)(1), (a)(3), or (a)(4) of section 613A of this Act* incurred in such sale shall be returned to the person against whom the penalty was assessed.

SEC. 613A. CUSTOMS FORFEITURE FUND.

(a) There is established in the Treasury of the United States a fund to be known as the Customs Forfeiture Fund (hereinafter in this section referred to as the "fund"), which shall be available to the United States Customs Service, subject to appropriation, during the period beginning on the date of the enactment of this section and ending on September 30, 1987. The fund shall be available with respect to seizures and forfeitures by the United States Customs Service under any law enforced or administered by it for payment (to the extent that such payment is not reimbursed under section 524 of this Act)—

(1) of all proper expenses of the seizure or the proceedings of forfeiture and sale (not otherwise recovered under section 613(a)), including, but not limited to, expenses of inventory, security, maintaining the custody of the property, advertising and sale, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(2) of awards of compensation to informers under section 619 of this Act;

(3) for satisfaction of—

(A) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(B) other liens against forfeited property;

(4) of amounts authorized by law with respect to remission and mitigation;

(5) for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the United States Customs Service; and

(6) of claims of parties in interest to property disposed of under section 612(b) of this Act, in the amounts applicable to such claims at the time of seizure.

In addition to the purposes described in paragraphs (1) through (6), the fund shall be available for purchases by the United States Customs Service for evidence (A) of smuggling of controlled substances, and (B) of violations of the currency and foreign transaction reporting requirements of chapter 53 of title 31, United States Code, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances.

(b)(1) Payment under paragraphs (3) and (4) of subsection (a) of this section shall not exceed the value of the property at the time of the seizure.

(2) Amounts under subsection (a) of this section shall be available, at the discretion of the Commissioner of Customs, to reimburse the applicable appropriation for expenses incurred by the Coast Guard for a purpose specified in such subsection.

(c) There shall be deposited in the fund during the period beginning on the date of the enactment of this section, and ending on September 30, 1987, all proceeds from forfeiture under any law enforced or administered by the United States Customs Service (after reimbursement of expenses under section 524 of this Act) and all earnings on amounts invested under subsection (d) of this section.

(d) Amounts in the fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year.

(f)(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, not more than $10,000,000 are authorized to be appropriated from the fund for each such fiscal year.

(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of $10,000,000 shall be deposited in the general fund of the Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.

SEC. 614. RELEASE OF SEIZED PROPERTY.

If any person claiming an interest in any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the provisions of this Act offers to pay the value of such vessel, vehicle, *aircraft,* merchandise, or baggage as determined under section 606 of this Act, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Secretary of Commerce if under the navigation laws, accept such offer and release the vessel, vehicle, *aircraft,* merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 613 of this Act.

SEC. 615. BURDEN OF PROOF IN FORFEITURE PROCEEDINGS.

In all suits or actions (other than those arising under section 592 of this Act) brought for the forfeiture of any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, *aircraft,* merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided,* That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a [vessel or vehicle] *vessel, vehicle, or aircraft,* or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel,

or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.

SEC. 616. TRANSFER OF FORFEITED PROPERTY.

(a) The Secretary of the Treasury may discontinue forfeiture proceedings under this Act in favor of forfeiture under State law. If a complaint for forfeiture is filed under this Act, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.

(b) If forfeiture proceedings are discontinued or dismissed under this section—

(1) the United States may transfer the seized property to the appropriate State or local official; and

(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

(c) The Secretary of the Treasury may transfer any property forfeited under this Act to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.

(d) The United States shall not be liable in any action relating to property transferred under this section if such action is based on an act or omission occurring after the transfer.

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SEC. 618. REMISSION OR MITIGATION OF PENALTIES.

Whenever any person interested in any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce, if under the navigation laws, before the sale of such vessel, vehicle, *aircraft,* merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfetiure, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs agent to take testimony upon such petition: *Provided,* That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

SEC. 619. AWARD OF COMPENSATION TO INFORMERS.

Any person not an officer of the United States who detects and seizes any vessel, vehicle, *aircraft,* merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who

furnishes to a district attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed [$50,000] *$250,000* in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, *aircraft,* merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed [$50,000] *$250,000* in any case.

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INTERNAL REVENUE CODE OF 1954

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Subtitle F—Procedure and Administration

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CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

SUBCHAPTER A. Examination and inspection.
SUBCHAPTER B. General powers and duties.
SUBCHAPTER D. Possessions.

Subchapter A—Examination and Inspection

Sec. 7601. Canvass of districts for taxable persons and objects.
Sec. 7602. Examination of books and witnesses.
Sec. 7603. Service of summons.
Sec. 7604. Enforcement of summons.
Sec. 7605. Time and place of examination.
Sec. 7606. Entry of premises for examination of taxable objects.
[Sec. 7607. Additional authority for Bureau of Customs.]
Sec. 7608. Authority of internal revenue enforcement officers.
Sec. 7609. Special procedures for third-party summonses.
Sec. 7610. Fees and costs for witnesses.
Sec. 7611. Cross references.

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[SEC. 7607. ADDITIONAL AUTHORITY FOR BUREAU OF CUSTOMS.

[Officers of the customs (as defined in section 401(1) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401(1)), may—

[(1) carry firearms, execute and serve search warrants and arrest warrants, and serve subpenas and summonses issued under the authority of the United States, and

[(2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.]

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